

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANDISK CORPORATION,
Plaintiff,

No. C 09-02737 WHA

v.

**ORDER REGARDING
COURT-APPOINTED
EXPERT**

LSI CORPORATION,
Defendant.

LSI CORPORATION and AGERE
SYSTEMS, INC.,

Counterclaimants,

v.

SANDISK CORPORATION,
Counterdefendant.

To be of assistance to the Court and the court-appointed expert, Attorney John Cooper of Farella Braun + Martel LLP has agreed to assist, *pro bono*, in framing a form of reference and assignment for the selected Rule 706 expert candidate, Dr. Chang Choo. Attorney Cooper will focus particularly on making sure that the assignments allocated to the court-appointed expert are workable from Dr. Choo's viewpoint. The Court appreciates Attorney Cooper's willingness to serve, and recognizes that once the form of reference and assignment is completed, Attorney Cooper will immediately recede from the scene and his involvement with this litigation will end.

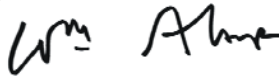
Therefore, Attorney Cooper should contact Dr. Choo promptly to go over the proposed scope of assignment appended hereto. Attorney Cooper should also discuss with counsel on both

1 sides any possible changes to the proposed assignment. All involved should be aware that the
2 assignment of tasks should be structured in a way so that the vast majority of Dr. Choo's work is
3 postponed until close to the time that expert reports are due. This will minimize unnecessary
4 expenses if the case happens to settle sooner rather than later. Of course, Dr. Choo will need to
5 invest *some* time in the coming months to get up to speed with the litigation and the technologies
6 involved, and should be compensated for such work.

7 Counsel shall meet and confer, and submit a proposed form of reference and assignment
8 **BY FRIDAY, APRIL 2, 2010.** Counsel shall also ensure that Dr. Choo receives a copy of this order
9 in due course, and that Attorney Cooper is immediately provided with Dr. Choo's contact
10 information. Again, all should be aware that Dr. Choo's main role will be to testify at trial; he is
11 *not* to act as a law clerk or confidential advisor to the judge.

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13 **IT IS SO ORDERED.**

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15 Dated: March 17, 2010.



16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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SCOPE OF ASSIGNMENT FOR RULE 706 EXPERT

[For Discussion Only]

The Rule 706 expert shall be appointed to do the following:

1. Testify at summary judgment and/or at trial on invalidity challenges to the claims-in-suit based on the prior art.
2. Testify at summary judgment and/or at trial on whether the accused products infringe the claims-in-suit.
3. Be prepared to testify on how various terms in the claims-in-suit would have been understood by a person of ordinary skill in the art.

In order to do the foregoing, the Rule 706 expert shall:

- Study the patents and claims-in-suit and related prosecution histories.
- Review and evaluate the parties' local-rule disclosures regarding invalidity and infringement.
- Study and evaluate the accused products.
- Study and evaluate the prior art.
- Study and evaluate the expert reports by both sides.
- Make requests to counsel for such additional materials as will be needed to accomplish all of the foregoing tasks.
- Meet with the two sides' experts to discuss the issues and their respective views in non-recorded sessions. The views expressed in these meetings will not be viable as evidence.
- Prepare his own report on invalidity, infringement, and claim construction (if so requested).
- Sit for a deposition on all of the foregoing tasks.
- Do all of the foregoing tasks in a timely manner consistent with the case management schedule.

By the 15th of each month, the Rule 706 expert shall submit to both sides a total invoice for the work performed and expenses incurred in the preceding month, and each side shall pay one half of this total within 21 calendar days unless an objection is filed with the Court by the non-paying party.